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Supreme Court of the United States

October Term, 1936

No. 214

JUAN BENGZON,
Petitioner,

v.

THE SECRETARY OF JUSTICE AND THE INSULAR AUDITOR OF THE PHILIPPINE ISLANDS,
Respondents.

BRIEF FOR RESPONDENTS

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STATUTES

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BRIEF FOR RESPONDENTS

Introduction

The petitioner seeks a writ of mandamus addressed to the respondents and directing them to order the payment to him of a gratuity under the provisions of Act No. 4051, Laws of the Philippines.

Opinions Below

The opinions of the lower courts have not been officially reported. The opinion of the Court of First Instance of Manila is to be found on pages 29 to 35 of the Record herein. The majority opinion of the Supreme Court of the Philippines appears on pages 36 to 43 of the Record and the minority opinion on pages 43 to 50 thereof.

Jurisdiction

The jurisdiction of this Court to review this case rests on sections 7 and 8 (a) of the act of February 13, 1925 (43 Stat. 940) and on section 7 of the act of March 24, 1934 (48 Stat. 462).

The final judgment of the Supreme Court of the Philippines was entered on February 7, 1936 (R-59). The petition for a writ of certiorari was filed on July 20, 1936, within the six months period prescribed by law. The case involves the interpretation of section 19 of the act of August 29, 1916 (the so-called Jones Law or Philippine Autonomy Act, 39 Stat. 545).

No notice of the filing of the petition for the writ was served upon the respondents within ten days after such filing as required by paragraph 3 of Rule 35 of this Court. The attorney for the respondents was informed by the clerk by telephone on September 10, 1936, that the petition and transcript of record had been filed on July 20, 1936, and that the case had been docketed. It is not believed that this failure on the part of the petitioner to comply with the rule affects the jurisdiction of this Court. Accordingly, the respondents make no point of it except to explain the apparent delay in the submission of this brief.

The Questions Presented

The only question presented by the record seems to be:

> Is section 7 of Act No. 4051, Laws of the Philippines, an "item of an appropriation bill" within the meaning of section 19 of the Philippine Autonomy Act?

This is substantially the question suggested under "The Issues of Law" on page 7 of the petition.

The Statutes Involved

The statutes involved in this case appear in the Appendix, pages 9 to 15.

STATEMENT OF THE CASE

For over twenty years prior to January 14, 1933, the petitioner was a justice of the peace at Lingayen, Pangasinan, Philippine Islands. On that date he attained the age of sixty-five years and automatically ceased to hold office in accordance with Act No. 3899, Laws of the Philippines.

In February, 1933, the Philippine Legislature passed Act No. 4051. This act provided for the payment of gratuities to insular officials and employees forced from the public service by reason of reorganization of the government and appropriated the necessary money for such payment. Section 7 of the act extended the benefits of the act to persons situated like the petitioner, *i.e.*, to justices of the peace separated from their offices in 1933 by reason of age. The Governor General approved the act on February 21, 1933, except section 7, which he expressly disapproved (R-32).

The petitioner believed that the Governor General's veto of section 7 was ineffective and that section 7 had become law in spite of the purported veto. Accordingly, he applied for the gratuity provided by the act. Payment of the gratuity was refused. The

petitioner thereupon applied to the Court of First Instance of Manila for a writ of mandamus addressed to the respondents and directing them to order the payment to him of the gratuity in question (R-1-3).

The Court of First Instance dismissed the petitioner's action on the ground that since the Governor General was not a party to the proceedings, the Court could not inquire into the alleged invalidity of his veto of section 7 (R-45). Upon appeal to the Supreme Court of the Philippines, that tribunal affirmed the judgment of the lower court (R-43), basing its decision on a finding that Act No. 4051 was an appropriation bill, that section 7 was an item in an appropriation bill (R-39) and that hence the veto of section 7 by the Governor General was a valid exercise of the power conferred upon him by the pertinent part of section 19 of the Philippine Organic Act (August 29, 1916; 39 Stat. 551), which provides:

> "The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object."

ARGUMENT

The respondents contend:

(1) That Act 4051, Laws of the Philippines, was an appropriation bill within the meaning of section 19 of the Philippine Autonomy Act.

(2) That Section 7 of Act 4051 was an item of an appropriation bill within the meaning of section 19 of the Philippine Autonomy Act.

Point I

Act 4051 was an Appropriation Bill

The bill in question sought to appropriate funds from the Philippine Treasury (section 10) to be paid to two classes of persons (sections 1 and 7). It is true that the bill was not in the usual form of an appropriation measure, with definite amounts set opposite stated objects of expenditure, but there is no requirement of law nor of binding custom that it should be in order to merit the title of "appropriation bill" within the meaning of the Philippine Organic Act. The important fact is that the act does directly call for an expenditure of public funds in two perfectly definite directions and hence is an "appropriation act," in the sense that it appropriates money. If the absence of the ordinary form in which appropriation measures are drawn up is to prevent a bill of this character from being classified as an "appropriation bill" subject to partial veto by the Governor General, then it is clearly evident that the insular legislature can, by an appropriate framing of any measure designed to take money from the Treasury, strip the Governor General of his authority under the Philippine Autonomy Act to veto objectionable items of expenditure. In order to prevent a frustration of the will of the Congress that the Governor General should have the power to confine the use of the public funds to proper objects, it is necessary to disregard the form of any given enactment and to look to the terms thereof to see (a) if money is appropriated and (b) if there are such clearly defined items of expenditure that one or more

may be vetoed without effect on the remainder. An examination of Act 4051 on this basis discloses (a) an appropriation in section 10 and (b), two entirely separate items of expenditure (sections 1 and 7). Based on this test, the act in question is an "appropriation bill."

While it is not binding on this Court, the view of the Philippine Legislature as to the character of Act 4051 is at least informative as to what that body believed it was enacting. Section 12 of the act anticipates a possible partial veto by the Governor General by referring to it in terms. Since the only kind of an enactment subject to such partial veto is an "appropriation bill" it is a fair assumption that the legislature regarded Act 4051 as an "appropriation bill" with separate items of expenditure or it would not have made mention of a possible partial veto. As no definition has ever been assigned by the courts or by the Congress to the words "items" or "appropriation bill" as used in the Philippine Autonomy Act and as the interpretation of these words by the Philippine Legislature is not only clearly not wrong but manifestly designed to give full effect to the will of the Congress, it is unlikely that this Court will care to disturb it.

Point II

Section 7 is an Item of Appropriation

Section 7 of Act 4051 designates a defined class of persons to whom gratuities are to be paid out of the money provided in section 10 of the act. It is true that section 7 contains no dollars and cents appropriation in itself, but again disregarding mere form,

it is perfectly apparent that section 7 calls for a payment of money from the treasury and that section 7 is separate from all other parts of the act. In other words, section 7 sets up a described object of expenditure (a certain group of persons) on which, by section 10, money is appropriated to be spent. It is hardly likely that by separating the *object* of the expenditure by a few lines in the act from the *sum* to be spent on such object, the legislature can deprive the Governor General of his power and authority to pass on the wisdom of the particular expenditure and thus force him either to approve the spending of money for this particular objectionable object or veto *in toto* an otherwise acceptable bill. If the legislature could achieve such a result by such methods the authority of the Governor General in the premises, conferred on him by the Philippine Autonomy Act, could be completely nullified.

Section 12 of the act, mentioned under Point I, indicates that the Philippine Legislature had no doubt that there were at least two items of appropriation in the act. For reasons already given, this court will probably be reluctant to oppose the view of the nature of sections 1 and 7 adopted by the insular legislature, namely, that they are items in an appropriation bill and hence subject to separate veto by the Governor General.

CONCLUSION

As the interpretation of Section 19 of the Philippine Autonomy Act adopted by the Philippine Legislature, the Governor General, and the Supreme Court of the Philippines is reasonable, is clearly

permissible under the words of the statute, and preserves to the Governor General the full powers granted him by the Congress, it is submitted that it should not be departed from but ought to be confirmed, in effect, by denial of the petition.

Respectfully submitted,

MARK E. GUERIN,
Counsel for Respondents.

APPENDIX

Statutes Involved

Philippine Autonomy Act (August 29, 1916; 39 Stat. 551):

> "SECTION 19. . . . The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he shall not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval."

ACT 4051, LAWS OF THE PHILIPPINES

AN ACT TO PROVIDE FOR THE PAYMENT OF RETIREMENT GRATUITIES TO OFFICERS AND EMPLOYEES OF THE INSULAR GOVERNMENT RETIRED FROM THE SERVICE AS A RESULT OF THE REORGANIZATION OR REDUCTION OF PERSONNEL THEREOF, INCLUDING THE JUSTICES OF THE PEACE WHO MUST RELINQUISH OFFICE IN ACCORDANCE WITH THE PROVISIONS OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND NINETY-NINE, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. Whenever it is necessary, in carrying out of the provisions of Act Numbered Four thousand and seven or any other provisions of law, department order, or regulation adopted for the purpose of consolidating activities or reducing the personnel and expenses of the Government, to abolish a position or retire an officer or employee in any bureau or office of the Insular Government on or before December thirty-first, nineteen hundred and thirty-three, the officer or employee to be separated or retired from the service shall be entitled to a gratuity as follows:

(a) Regularly appointed officers and employees shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year: PROVIDED, That in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(b) Temporary officers and employees who have served the Government for at least five years before the approval of this Act, shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year, PROVIDED, That in the case of

those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(c) Temporary officers and employees who have served the Government less than five years before the approval of this Act, shall be entitled to a gratuity at the rate of half a month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof.

Persons serving on a part time basis shall not be entitled to the gratuities authorized in this Act.

SECTION 2. In separating or retiring employees under the provisions of this Act, Department Heads shall give preference to officers or employees who, on account of their advanced age or of any physical or mental defect, are not fit to render further efficient service in the positions they occupy: PROVIDED, HOWEVER, That the appointees of the Governor-General may be retired by the Department Head concerned with the approval of the Governor-General.

SECTION 3. The gratuity provided in section one hereof shall be based on the highest basic rate of salary received and shall be paid monthly at the rate of thirty-three and one-third per centum of the monthly salary of the officer or employee, with the exception of those who will be entitled to a gratuity of one month's salary or less who shall totally be paid immediately upon separation: PROVIDED, HOWEVER, That with the approval of the Head of

the Department in which such officer or employee was serving upon separation or retirement, the said officer or employee may, subject to such rules and regulations as may be approved by the Secretary of Finance, sell, transfer or cede his right to the gratuity payments, to any investment fund under the control of the Insular Government, or to any bank duly authorized to transact business in the Philippine Islands: PROVIDED, FURTHER, That the gratuity provided for in this Act shall not be attached or levied upon execution.

SECTION 4. If an officer or employee separated or retired under the provisions of this Act is entitled to the benefits of Act Numbered Twenty-five hundred and eighy-nine, as amended, or to the benefits of any law or special pension fund created by authority of the Philippine Legislature, such as the Teacher's Retirement and Disability Fund by virtue of Act Numbered Three Thousand and fifty, as amended, the Pension and Retirement Fund of the Philippine Health Service under Act Numbered Thirty-one hundred and seventy-three, and the Pension and Retirement Fund of the Philippine Constabulary under Act Numbered Sixteen hundred and thirty-eight, he shall have the privilege to choose between the benefits prescribed in said Acts and those herein provided for; but in no case shall the payment of gratuity under more than one Act be authorized. If he chooses the benefits granted by the special pension or retirement Act, he shall be retired under the provisions of said Act if he is entitled to its benefits; in case he prefers the gratuity provided for in this Act, he shall be granted such gratuity, and the

amounts deducted from his salary as contributions to the Teacher Retirement and Disability Fund, the Pension and Retirement Fund of the Philippine Health Service, or the Pension and Retirement Fund of the Philippine Constabulary, as the case may be, shall be refunded to him, and in the case of the Teacher's Retirement and Disability Fund, said fund shall also return to the general funds of the Insular Government the corresponding direct contributions made to said special fund by the Insular Government: PROVIDED, HOWEVER, That Judges and Auxiliary Judges of First Instances and Public Service Commissioners who may be retired under the provisions of this Act, shall be entitled to the benefits provided for in Act Numbered Twenty-five hundred and eighty-nine, as amended, the provisions of this Act or any other Act to the contrary notwithstanding.

SECTION 5. In case of the death of an officer or employee after separation or retirement from the service under the provisions of this Act, any gratuity or part thereof due to him shall be paid to his legitimate heir or heirs, or, if discounted under the provisions of section three hereof, then to the investment fund of the Insular Government or to the bank to which the right to such gratuity may have been ceded.

SECTION 6. A person separated or retired under the provisions of this Act may be reappointed to any position in the Insular Government but by accepting such reappointment he shall forever waive all future gratuity payments and or claims under the provisions of this Act. Similarly, a retired person who, under the revisions of section three hereof, has discounted the gratuity payments to which he is entitled shall,

upon his reappointment to any position in the Insular Government, first refund to the investment fund or the bank to which he has ceded his right to the gratuity the total discounted value of all the gratuity payments which he would not yet have received had these been made to him in monthly instalments.

SECTION 7. The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act.

SECTION 8. The offices or positions vacated by the separation or retirement of officers and employees with gratuities paid under the provisions of section one of this Act shall not be filled and shall be considered abolished ipso facto, except those specifically created by law, and those of chief clerk, chief of division, and lighthouse keeper.

SECTION 9. Nothing herein provided shall be construed as entitling to the benefits of this Act those officers and employees of the Insular Government who voluntarily resign from the service due to the reduction of their compensation or to transfer from one office to another by virtue of the provisions of any Act, or to the abolition of double compensations to which they were formerly entitled, or to any cause not provided herein.

SECTION 10. The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated.

SECTION 11. This Act shall take effect as of January first, nineteen hundred and thirty-three: PROVIDED, That the provisions hereof shall be applicable to such officers and employees of the Insular Government as were separated from the service during the year nineteen hundred and thirty-two as a result of the operation of Executive Order No. 369 of the Governor-General and of his Memorandum Order issued on April eight, nineteen hundred and thirty-two.

SECTION 12. If for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other section and provisions shall continue to govern as if the sections or provision so disapproved or held invalid had never been incorporated in this Act.

Approved, section 7 excepted, February 21, 1933.